

JUN 12 2013

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

TROY VINCENT OAKES,)	CASE NO. 7:13CV00261
)	
Petitioner,)	
)	MEMORANDUM OPINION
v.)	
)	
COMMONWEALTH OF VIRGINIA,)	By: James C. Turk
)	Senior United States District Judge
Respondent.)	

Troy Vincent Oakes, a Virginia inmate proceeding pro se, filed this petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging the August 1996 judgment of the Tazewell County Circuit Court under which he stands convicted of conspiracy and distribution of cocaine and sentenced to fifteen years on each offense.¹ Oakes asserts that he is actually innocent of the charged offenses, based on alleged errors by counsel and prosecutorial misconduct. § 2254 Pet. 5. After review of the record, the court finds that the current petition must be summarily dismissed as successive, pursuant to 28 U.S.C. § 2244(b).²

Court records indicate that Oakes previously filed a § 2254 petition concerning the same convictions, Civil Action No. 7:05CV00168. In that case, the respondent filed a motion to

¹ The court suspended Oakes' entire sentence in 1996. In April 2001, however, Oakes was found guilty of violating the terms of his probation, and the court revoked his thirty-year sentence, but resuspended five years of that total.

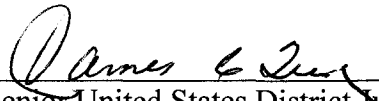
² Under Rule 4(b) of the Rules Governing § 2254 Cases, the court may summarily dismiss a § 2254 petition "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court."

dismiss, which the court granted; Oakes' appeal was dismissed.³ Thus, Oakes's current § 2254 petition is a subsequent one, falling under the prohibition in 28 U.S.C. § 2244(b) against a second or successive petition.

Pursuant to § 2244(b), a federal district court may consider a second or successive § 2254 petition only if petitioner secures specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the petition meet certain criteria. § 2244(b)(3). Because Oakes does not demonstrate that he has obtained such certification by the Court of Appeals, the court will dismiss the petition without prejudice as successive. An appropriate order will enter this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to petitioner.

ENTER: This 1st day of June, 2013.


Senior United States District Judge

³ Oakes states that in March 2012, he pursued a petition for a writ of actual innocence in the Court of Appeals of Virginia, under Va. Code Ann. § 19.2-327, which was denied. Since Oakes' current claims challenge the validity of his confinement under the judgment of conviction, however, his recent actual innocence proceedings in state court do not affect the court's determination that his § 2254 petition is successive.